IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18164 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B.S. SAMARAK TRUST

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18164 of 2003

MR PS CHAMPANERI for Petitioner No. 1-2

MR. NAGESH SOOD, AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 1

MR YV SHAH for Respondent No. 3

MR DHAVAL D VYAS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/08/2004

C.A.V. JUDGEMENT

1. In the present Special Civil Application under Article 226 of the Constitution of India, the petitioner-Trust has prayed for an appropriate writ, direction or order quashing and setting aside the order passed by the District Collector, Junagadh, dated 21-11-2003 in filing the application of the petitioner for granting the land bearing Survey no.915/2 admeasuring 1 acre and 11 guntas situated at Taluka District Junagadh,.

2. Few facts are necessary for the purpose of determination of the present Special Civil Application which are as under:

The land bearing Survey no.915/2 Paiki admeasuring 1 acre and 11 guntas is of the ownership of Kodinar Nagarpalika. The petitioner is the Public Charitable Trust registered under the Bombay Public Trust Act, 1958. As the petitioner-Trust wanted to open a new Mahila Arts and Home Science College at Kodinar, they approached the State Government, and it is the case of the petitioners that the Education Department, Government of Gujarat granted approval and sanction in principle to open the Mahila Arts and Home Science College at Kodinar on the terms and conditions stipulated in the said communication dated 17th August, 1993. Accordingly, the petitioner-Trust had set up the Mahila Arts and Home Science College in the premises given by Bileshwar Sugar Factory. It is the case of the petitioners that the said premises was given by the Sugar Factory till the petitioner-Trust makes its own arrangement by having its own Mahila College Building. The petitioner-Trust, therefore, submitted an application for allotment and grant of land on token price to the then Kodinar Nagarpanchayat in the year 1994. It seems that the application submitted by the petitioner-Trust came to be considered by the General Board of the Kodinar Nagarpanchayat in its meeting dated 21-11-1994, and a resolution came to be passed being Resolution no.102 by the General Board, and it was resolved to allot/grant land bearing Survey no.915/2 Paiki on certain terms and conditions. It is pertinent to note at this stage, that the petitioner-Trust has not produced the copy of the resolution dated 21-11-1994 being Resolution no.102 alongwith Special Civil Application, however, in an affidavit-in-reply filed on behalf of the Kodinar Municipality the same is produced at Annexure R-1. It seems that one of the conditions was to obtain necessary approval of the Competent Authority as required under

Section 98 of the Gujarat Panchayat Act. Another condition is also that, till the appropriate approval is received/obtained from the Competent Authority of the State Government the ownership of the land in question would be of Nagarpanchayat, and till necessary approval is obtained, the petitioner-Trust cannot deal with the land in question, in any manner whatsoever, and only after the necessary permission is obtained the possession of the land was to be handed over to the petitioner-Trust by the Panchayat. It seems that before even any permission/approval is received from the Competent Authority of the State Government, the then Chairman of the Kodinar Nagarpanchayat and the petitioner-Trust entered into an agreement dated 3rd September, 1996 regarding the land in question assuming that, prior approval of the State Government would be granted, and by separate possession receipt dated 3-9-1996, the then Chairman of the Kodinar Nagarpanchayat handed over possession of the land bearing Survey no.915/2 to the petitioner-Trust. Even as per the agreement dated 3-9-1996, one of the conditions is that possession is handed over subject to the approval from the State Government and that conditions which are imposed while passing Resolution no.102 dated 21-11-1994 would be binding and that the land in question is allotted/granted to the petitioner-Trust on token price of Rs.11,000/-. It seems that the Chairman of Kodinar Nagarpanchayat entered into the agreement and issued the possession receipt pursuant to Resolution no.93 of the General Board dated 29-8-1996, however, the said Resolution no.93 dated 29-8-1996 is also not on record of the present Special Civil Application.

2.1 It seems that thereafter, the petitioner-Trust had approached the Kodinar Nagarpanchayat for granting development permission for putting up the construction of compound wall, and the Kodinar Nagarpanchayat vide its Development Permission/Raja Chitti dated 5-10-1996 granted permission to the petitioner-Trust to construct compound wall. At this stage, it is pertinent to note that as per the original Resolution dated 21-11-1994 being Resolution no.102 until the necessary approval/permission is received from the State Government, the ownership of the land in question would be that of Nagarpanchayat and that the Trust was not permitted to deal with the land in question, in any manner whatsoever, meaning thereby, till the necessary approval is received from the State Government, it was not open for the Trust even to put up the compound wall.

2.2 It seems that on the basis of the aforesaid

agreement dated 3-9-1996, the petitioner-Trust applied for the electricity connection from the Gujarat Electricity Board and the Chairman of the Kodinar Nagarpanchayat granted no objection certificate in favour of the petitioner-Trust also. It seems that on the basis of the application submitted by the petitioner-Trust dated 24-9-1996, the petitioner-Trust was also granted the water connection with respect to the land in question. Thereafter, the petitioner-Trust had submitted necessary plans for putting up the construction of the new building of College on 29-7-1998, and requested for granting the development permission/Raja Chitti. However, the General Board of the Kodinar Nagarpanchayat vide its Resolution no.1141 dated 16-11-1998 rejected the application submitted by the petitioner-Trust for granting Development Permission/Raja Chitti for putting up the construction in the land bearing Survey no.915/2 on the ground that (i) The Competent Authority of the State Government has not granted the approval/permission to allot land bearing Survey no.915/2 in favour of the petitioner-Trust, (ii) The Regular Civil Suit no.99 of 1994 is pending and (iii) As per conditions nos.1 and 4 of Resolution no.102 dated 21-11-1994, till the necessary approval/permission is received from the Competent Authority of the State Government, the ownership of the land in question would be that of Nagarpanchayat/ Nagarpalika, and as the land in question is of the ownership of the Nagarpalika, permission to put up the construction cannot be granted. Though the said resolution came to be passed on 16-11-1998 and the petitioner-Trust was also communicated with regard to rejection of their application dated 14-12-1998, the said resolution has not been challenged till date.

3. That thereafter, the petitioner-Trust has submitted an application dated 22-12-1998 before the Mamlatdar, Kodinar, requesting to grant permission/approval to allot the land in question to them. It seems that the proposal was sent to the State Government and by letter dated 6-7-2000, the State Government directed the Mamlatdar, Kodinar to enquire into whether the land in question is Government Karabai (waste land), and if it is found that the land in question is a Government waste land, to proceed further with the proposal, otherwise to file the proposal. It seems that in the meantime, the Kodinar Nagarpalika in its meeting held on 29-1-2000 passed a resolution being Resolution no.208 to reject the application/proposal of the petitioner-Trust for allotment of the land bearing Survey no.915/2 on the ground that (i) The permission/approval from the State Government is not

obtained, (ii) The Trust is not granted the necessary approval/permission/affiliation by Saurashtra University and (iii) The Nagarpalika wants to develop the land for their own purpose by constructing " Nagar Palika Bhavan", and ultimately, resolved to reject the application of the petitioner-Trust for allotment/grant of land to the petitioner-Trust. It is pertinent to note at this stage also, that the said Resolution no.208 dated 29-1-2000 is also not challenged by the petitioner-Trust and the Trust has accepted the same and not carried further. It seems that the Collector, Junagadh, was informed accordingly, and the Collector was requested not to grant approval/permission to the proposal with regard to allotment of the land in question to the petitioner-Trust and to reject the same. That thereafter, by communication dated 21-11-2003 , the Collector, Junagadh, has informed/communicated to the petitioner-Trust that earlier vide communication dated 6-7-2000, the Mamlatdar, Kodinar, was to make enquiry whether the land in question was a Government waste land or not, and on enquiry it is found that the land in question i.e. land bearing Survey no.915/2 is of the ownership of Kodinar Nagarpalika, and the Kodinar Nagarpalika wants to allot/grant the said land to the petitioner-Trust and the Kodinar Nagarpalika has also passed a resolution to that effect, and therefore, the application of the petitioner is filed.

3.1 Being aggrieved and dissatisfied with the said communication dated 21-11-2003 of the Collector, Junagadh, in filing the application of the petitioner-Trust for allotting the land in question, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution. The petitioner has also prayed for an appropriate writ, direction or order directing the Collector, Junagadh, to grant sanction and/or approval to the agreement dated 3rd September, 1996 and also for an appropriate writ, direction or order directing the Kodinar Nagarpalika to grant sanction and approval for the building plans for setting up and construction of building of Mahila Arts and Home Science College in the land bearing Survey no.915/2 Paiki situated at Kodinar.

4. Shri P.S. Champaneri, the learned Advocate appearing on behalf of the petitioner has vehemently submitted that the order passed by the Collector, Junagadh, is mala fide, and is, at the instance of, respondent no.4 who is the sitting M.L.A from Kodinar Constituency against whom the President of the petitioner-Trust has contested the election. He has further submitted that the decision of the Collector,

Junagadh, is politically motivated, and because of the political rivalry, the decision has been taken by the Collector, Junagadh. He has further submitted that pursuant to the agreement dated 3rd September, 1996, the petitioner-Trust had changed and altered the position, and therefore, now, it is not open for the Collector not to grant/accord the sanction for allotment of land in favour of the petitioner-Trust. He has further submitted that not only the resolution came to be passed in favour of the petitioner-Trust for allotting the land in question to the petitioner-Trust, but subsequently, the possession is also handed over to the petitioner-Trust, and permission was granted by the then Kodinar Nagarpanchayat in the year 1996 allowing the petitioner to construct compound wall, and that no objection certificate was issued in favour of the petitioner-Trust for electricity connection and the water connection was also granted in favour of the petitioner-Trust. Therefore, he has submitted that the decision of the respondents in not allotting/granting the land in question to the petitioner-Trust is absolutely illegal and because of the conduct on the part of the Nagarpalika, now the Nagarpalika is estopped from not allotting the land in question to the petitioner-Trust. He has further submitted that looking to the laudable object of the petitioner-Trust, and that the petitioner-Trust wanted to construct, and have the College, the respondents ought to have granted/allotted the land in question to the petitioner-Trust, and therefore, requested to grant the prayers which are sought in the present Special Civil Application. He has further submitted that under the provisions of Section 105 of the Gujarat Municipalities Act, the Collector can grant the land in public interest.

6. In response to the notice issued by this Court, Shri D.D. Vyas, the learned Sr. Counsel appears on behalf of the Kodinar Nagarpalika. Shri Sood, learned AGP appears on behalf of the State Government as well as the Collector, Junagadh. An affidavit-in-reply is filed on behalf of the Kodinar Nagarpalika by the Chief Officer. An affidavit-in-reply is also filed by respondent no.4 denying the allegations of mala fide. Shri D.D. Vyas, the learned Sr. Counsel appearing on behalf of the petitioners has submitted that the present Special Civil Application is required to be dismissed on the ground of suppression of material fact, and not producing the relevant documents. He submitted that the petitioners have deliberately not produced Resolution no.102 dated 21-11-1994 passed by the Kodinar Nagarpanchayat by which it was decided to grant/allot

land in question to the petitioner-Trust on certain conditions. He submitted that by Resolution no.102 dated 21-11-1994, the Kodinar Nagarpanchayat decided to allot/grant land in question to the petitioner-Trust subject to approval/necessary permission from the Competent Authority of the State Government and that till the necessary approval/permission is obtained/received from the State Government, the ownership of the land in question would be that of Kodinar Nagarpanchayat, and that till approval/necessary permission is obtained/received from the State Government, it was not open for the petitioner-Trust to deal with the land in question, in any manner whatsoever. He has submitted that the agreement dated 3-9-1996, and handing over of the possession, by the then Chairman of the Nagarpanchayat was contrary to Resolution no.102 dated 21-11-1994. He further submitted that the resolution by which the Chairman was authorised to handover the possession i.e. Resolution no.93 dated 28-8-1996 is not produced on record. Thus, he has submitted that handing over of possession by the then Chairman to the petitioner-Trust, and the agreement dated 3-9-1996 are absolutely illegal and by virtue of that, no rights would be vested in favour of the petitioner-Trust. He has further submitted that, in fact, the Nagarpalika has already passed resolution being Resolution no.208 dated 29-1-2000, and it was resolved to reject the application of the petitioner-Trust for allotment of the land bearing Survey no.915/2, as the Nagarpalika is in need of the land in question, and wants to develop the land in question. He has further submitted that the petitioner-Trust has deliberately not produced Resolution no.208 dated 29-1-2000. He has further submitted that, in view of the fact that Resolution no.141 dated 16-11-1998 by which the plans submitted by the petitioner-Trust for construction in the land in question came to be rejected, and by which the application of the petitioner-Trust for granting development permission/Raja Chitti for putting up the construction in the land in question came to be rejected is not challenged by the petitioner-Trust and the same is accepted by the petitioner-Trust. He further submitted that even Resolution no.208 dated 29-1-2000 of the Kodinar Nagarpalika by which the application of the petitioner for allotment/grant of land is rejected is not challenged by the petitioner-Trust and the same is accepted by the petitioner-Trust. Therefore, Shri D.D.Vyas, learned Sr. Advocate has submitted that in view of the fact that the Resolution no.141 dated 16-1-1998 and Resolution no.208 dated 29-1-2000 are not challenged by the petitioner-Trust and the petitioner-Trust had accepted

the same, the prayers which are sought for in the present Special Civil Application are not required to be granted. He further submitted that, even otherwise, the land in question which is in the prime location could not have been allotted/granted to the petitioner-Trust without following due procedure of law, and without obtaining necessary permission/approval from the competent authority of the State Government. He has relied upon the judgment of this Court in the case of RAJUBEN DADBHAI KAHOR CHARITABLE TRUST AND ORS. V. STATE OF GUJARAT AND OTHERS. reported in 2004(1) G.L.R. 353. He submitted that the land could not have been allotted in favour of the petitioner-Trust for a token amount of Rs.11,000/-. He submitted that in view of the aforesaid judgment, even otherwise, the allotment/grant, if any, in favour of the petitioner-Trust could be illegal, and contrary to the provisions of the Gujarat Municipalities Act. He, therefore, requested to dismiss the present Special Civil Application.

7. Shri Sood, the learned A.G.P. has supported, and adopted the arguments canvassed on behalf of the respondents. He submitted that the land was allotted to the Municipality for fish market and earlier, it was given for ST Depot. He has further submitted that without following due procedure, and without obtaining necessary approval from the Competent Authority of the State Government, the land could not have been given/allotted to the petitioner-Trust for a token amount of Rs.11,000/-. He has further submitted that the land belongs to the Kodinar Nagarpalika, and as the Kodinar Nagarpalika has passed resolution not to allot/grant the land in question to the petitioner-Trust, the application submitted by the petitioner-Trust is rightly filed by the Collector, Junagadh. He has further submitted that prayers which are sought for in the present Special Civil Application are not required to be granted, as the agreement upon which the reliance is placed, is itself illegal and without authority under the law, and even contrary to the Resolution no.102 dated 21-11-1994.

8. Heard the learned Advocates appearing on behalf of the parties.

The case of the petitioners is based upon the agreement entered into between the Chairman of the Kodinar Nagarpanchayat and the petitioner-Trust dated 3rd September, 1996 and also the General Board Resolution no.102 dated 21-11-1994. By Resolution no.102 dated 21-11-1994, the Kodinar Nagarpanchayat passed a resolution to accept the application of the

petitioner-Trust for allotment/grant of land in question to the petitioner-Trust. The land bearing Survey no.915/2 is of the ownership of the Kodinar Nagarpanchayat (now Kodinar Nagarpalika). One of the conditions stipulated in the Resolution no.102 dated 21-11-1994 was that, the grant/allotment in favour of the petitioner is subject to the approval/permission of the Competent Authority of the State Government, and that till the approval/permission of the Competent Authority of the State Government is received/obtained, the Kodinar Nagarpanchayat would continue to be the owner of the land in question and that it was not open for the Trust to deal with the land in question, in any manner whatsoever. Thus, the petitioner-Trust was not even authorised to put up any construction in the land in question. Still, and in spite of the aforesaid conditions stipulated in Resolution no.102 dated 21-11-1994, though the necessary permission/approval of the Competent Authority of the State Government was not received/obtained, the then Chairman of the Kodinar Nagarpanchayat entered into an agreement with the petitioner-Trust on 3rd September, 1996 and handed over the possession of the land in question to the petitioner-Trust, and issued a possession receipt dated 3rd September, 1996. From the agreement which is at Annexure "E" to the petition, and the possession receipt dated 3-9-1996 which is at Annexure "F", it seems that the Chairman of the Kodinar Nagarpanchayat has issued possession receipt and entered into an agreement on the basis of Resolution no.93 dated 28-8-1996. As stated hereinabove, Resolution no.93 dated 28-8-1996 is not on record, however, in view of the fact that the grant/allotment in favour of the petitioner-Trust pursuant to Resolution no.102 dated 21-11-1994 was subject to the necessary prior approval/permission of the Competent Authority from the State Government, and till then, the Nagarpanchayat continues to be the owner of the land in question, the then Chairman of the Kodinar Nagarpanchayat could not have entered into the agreement dated 3rd September,1996, and could not have issued the possession receipt dated 3-9-1996. Even in the agreement dated 3-9-1996 it is stated that the said agreement is subject to the approval of the State Government, and that the conditions which are imposed in Resolution no.102 dated 21-11-1994 would be binding and continued. Thus, when there was no permission/approval of the Competent Authority of the State Government, the then Chairman of the Nagarpanchayat could not have entered into the agreement, and could not have handed over the possession. Thus, the agreement dated 3rd September, 1996 and the possession receipt dated 3rd September, 1996 were absolutely illegal and

contrary to Resolution no.102 dated 21-11-1994. Under the circumstances, the relief claimed on the basis of an illegal agreement cannot be granted by this Court in exercise of powers under Article 226 of the Constitution of India.

9. The reliance placed on behalf of the petitioners to Resolution no.9 to the Town Planning Committee of the Kodinar Nagarpanchayat dated 3-10-1996 allowing the petitioners to construct compound wall is also not helpful to the petitioner-Trust and is neither here nor there as the said Resolution and granting permission to the petitioner-Trust for putting up the construction of the compound wall itself was illegal and contrary to the resolution of the General Board being Resolution no.102 dated 21-11-1994 inasmuch as the condition stipulated in Resolution no.102 dated 21-11-1994 is that, till the necessary approval/permission is obtained/received from the Competent Authority of the State Government, the ownership of the land in question would be that of Nagarpanchayat and the Trust cannot deal with the land in question, in any manner whatsoever. Under the circumstances, the petitioner cannot rely upon the Resolution/permission for putting up the construction of compound wall which itself was illegal. Similarly, the grant of no objection certificate by the Chairman of the Kodinar Nagarpanchayat for having electricity connection and grant of water connection are also neither here nor there.

10. The main aspect which is required to be considered is with regard to the allotment of land in favour of the petitioner-Trust on payment of token price of Rs.11,000/- in absence of any approval/permission from the Competent Authority. As held by this Court in Rajubaben's case (Supra), the land in question could not have been allotted to the petitioner-Trust, firstly, without holding any public auction and that too, unless and until there is a prior approval of the Competent Authority from the State Government, no rights are vested in favour of the petitioner-Trust. In the present case, the land of the Municipality was decided to be allotted/granted at a token price of Rs.11,000/- without holding any public auction. Secondly, there is no prior approval/permission from the Competent Authority of the State Government, and under the circumstances, unless and until there is an approval/permission from the Competent Authority of the State Government there are no rights in favour of the petitioner-Trust. Even otherwise, as stated hereinabove, by Resolution dated 141 dated 16-11-1998, the application of the petitioner-Trust for

granting development permission/Raja Chitti for putting up the construction came to be rejected and by Resolution no.208 dated 29-1-2000, the application of the petitioner-Trust for allotment/grant of the land in question also came to be rejected and both the resolutions are accepted by the petitioner-Trust inasmuch as the same are not challenged by the petitioner-Trust. Under the circumstances, the prayer of the petitioners for directing the respondents to allot/grant land in question to the petitioner-Trust and directing the Nagarpanchayat to sanction the development plan for putting up the construction in the land in question cannot be accepted. Thus, the prayer in terms of paragraphs 30 (B) and 30(C) cannot be granted. The petitioner has prayed for an appropriate writ, direction or order directing the Collector, Junagadh, to accord sanction and/or approval to the agreement also cannot be granted. As stated hereinabove, the agreement itself is illegal, and contrary to Resolution no.102 dated 21-11-1994.

11. Now, so far as the prayer in terms of paragraph 30 (A) for an appropriate writ, direction or order quashing and setting aside the order passed by the Collector, Junagadh, dated 21-11-2003 is concerned, the land in question is of the Nagarpalika. The Nagarpalika has already passed Resolution no.208 dated 29-1-2000 rejecting the application of the petitioner for allotment/grant of the land in question to the petitioner-Trust, and the said resolution is not challenged by the petitioner-Trust, and if on the basis of the same when the Municipality itself does not want to allot and/or grant the land to the petitioner-Trust and wants to use the land in question for their own purpose and benefit, and if on the basis of that, the Collector has filed the application of the petitioner-Trust, it cannot be said that there is any illegality committed by the Collector, Junagadh. One of the arguments canvassed on behalf of the petitioner-Trust is that before the aforesaid communication dated 21-11-2003 no opportunity of being heard has been given to the petitioner-Trust. There is no provision for giving an opportunity of being heard. The petitioner is already communicated the resolution by which it is resolved to reject the application for allotment/grant of land, and the same is not challenged by the petitioner-Trust, and the petitioner-Trust has, as such, accepted the same, and on the basis of which, if the Collector has filed the application, there is no question of giving any opportunity of hearing to the petitioner-Trust. Considering the aforesaid facts and circumstances, the

petitioners are not entitled to any of the reliefs which is sought for in the present Special Civil Application, more particularly, on the basis of the agreement which itself is illegal.

12. For the reasons stated hereinabove, the Special Civil Application is dismissed. Notice discharged.

(M.R. Shah, J.)

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